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July 11, 2002

**Karl Gleaves, Esq.
Assistant General Counsel for Ocean Services
1305 East-West Highway
SSMC 4, Room 6111
Silver Spring, MD 20910**

**Re: Request of the Town of Cortlandt, New York, with Respect to
the Appeal of Millennium Pipeline Company, L.P. from the
New York State Department of State Coastal Zone
Management Act Objection**

Dear Mr. Gleaves:

We are writing on behalf of the Town of Cortlandt, New York ("Town") regarding the June 7, 2002 appeal of Millennium Pipeline Company, L.P. ("Millennium") to the Secretary of Commerce ("Secretary") of the New York State Department of State's May 9, 2002 objection pursuant to the Coastal Zone Management Act ("CZMA" or "the Act"), 16 U.S.C. § 1451 et seq. As set forth below, because of the Town's vital interest in, and its particularized knowledge of, this matter, we respectfully request that the Town be allowed to participate in these proceedings as a party co-defendant, intervenor, or special participant. Alternatively, we would request that the Town be allowed to participate as an amicus in all proceedings related to the disposition of the appeal, and that it be given full notice of all proceedings and an opportunity to participate before any decision in this matter is rendered.

**The Town of Cortlandt Should Be Allowed to Participate as a Party
Co-Defendant or an Intervenor in these Proceedings.**

The Town respectfully requests that it be allowed to intervene in these proceedings as a party co-defendant or special participant. Participation as such a party would allow the Town to safeguard its unique interests in this matter, and would allow

the Secretary to benefit from the Town's unique and specialized knowledge of the factual and legal background to this proceeding. It is within the Secretary's discretion to allow interested parties to intervene, and accords with past practice of the Secretary. U.S. Dept. of Commerce, *Virginia Electric and Power Co.*, 1994 NOAA LEXIS 31 at *26 (granting intervenor status to city). Allowing the Town to intervene would also accord with the Act's goal of encouraging participation by local governments in the development and implementation of state coastal zone management programs. *See* 16 U.S.C. § 1452 (4).

Although standing requirements in administrative proceedings may be less demanding than the standing requirements for Article III courts, *see Envirocare of Utah, Inc. v. Nuclear Regulatory Commission*, 194 F.3d 72, 74 (D.C. Cir. 1999), the Town satisfies all the traditional requirements of standing applicable in federal courts. The Constitution's "case and controversy" requirement mandates that a plaintiff suffer an injury in fact, that the injury be caused by the action challenged, and that the courts be capable of redressing the injury. Courts have also imposed prudential standing requirements, mandating that plaintiffs come within the "zone of interest" protected by the statute under which they are seeking relief.

The Town meets the three constitutional requirements of injury in fact, causation, and redressability. If Millennium is allowed to construct the pipeline as currently planned, the Town will suffer injury in fact by virtue of the increased risk of environmental harm and immediate aesthetic degradation of the environment, faced by its citizens who live within the coastal zone in close proximity to the proposed pipeline. Additionally, the Town will suffer injury if it loses the opportunity to participate in this vitally important appeal process. The Secretary's decision regarding the consistency certificate will be the final administrative forum in which the Town can assert its rights, and the pipeline cannot be constructed without this certificate. Because this appeal represents the final administrative proceeding to decide the certification, the causation and redressability requirements are satisfied.

The Town also satisfies the prudential standing requirements of the Article III courts because the Town is within the zone of interest protected by the CZMA. The CZMA was enacted to encourage the prudent management and conservation of natural resources in coastal areas. *Secretary of the Interior v. California*, 464 U.S. 313, 316, 104 S. Ct. 656 (1984). In support of this endeavor, the Act encourages broad public participation in carrying out its conservation goals. *See* 16 U.S.C. § 1452 (4); *Secretary of the Interior v. California*, 464 U.S. at 316. As a stakeholder concerned with the proper management of the environmental and aesthetic resources in New York's coastal zone, the Town clearly falls within the zone of interest protected by the CZMA. *See Knaust v. City of Kingston*, 978 F.Supp. 86, 94 n.7 (N.D.N.Y. 1997) *vacated as moot by Knaust v. City of Kingston*, 157 F.3d 86 (2nd Cir 1998) (noting that a shared interest in the preservation of coastal areas is more likely to confer standing under the CZMA).

Additionally, the Town clearly has administrative standing to participate as an intervenor in the instant proceedings. The Town has a unique interest in the outcome of the proceedings and possesses detailed knowledge of the factual and legal background related thereto. Much of the Town, including the entire Village of Croton-on-Hudson, lies within the New York State Coastal Zone, as indicated by the New York State Coastal Zone Boundary Map. This includes the pipeline's Haverstraw Bay crossing within the Hudson River, the area where the pipeline route would be blasted for its landfall within the Town, and the landward area within 1,000 feet of the shoreline. This area is considered to be the gateway to the Hudson Highlands and the entire Hudson River Valley and, in addition to its value as an historic and aesthetic resource, includes essential fish and endangered species habitat. The proposed pipeline would run through the heart of this coastal community, exposing thousands of Town residents to environmental and aesthetic degradation if allowed to proceed.

The Town's Coastal Zone also includes the Indian Point Nuclear Power Plant. The pipeline would bisect Route 9, which is the primary evacuation route for the Town's coastal area in the event of a mishap or terrorist attack – the latter of which is no longer an unimaginable possibility.

The Town has long strived to protect, preserve and enhance these and all of its coastal resources. Moreover, the Town is well versed in the unique geography and geology of this coastal area, which, as the Town demonstrated during the permit application process, make it particularly unsuitable for pipeline construction. Indeed, the Town has been participating in the permit application process at the state and federal level since Millennium first proposed the project. Thus, it has intimate familiarity with the facts of the case and has played a role as a major stakeholder in all proceedings to date. Although the CZMA does not specifically provide for intervenors in appeals from state objections, Agency practice allows for the possibility. U.S. Dept. of Commerce, Virginia Electric and Power Co., 1994 NOAA LEXIS 31 at *26.

Allowing the Town to intervene in these proceedings would not result in an undue broadening of the issues on appeal. Because the Town has already participated in the development of the administrative record and has noted its objections to the pipeline project on the record, its concerns are already included in the scope of the issues to be reviewed in the appeal. Thus, allowing the Town to intervene will not result in additional issues for the Secretary to consider. On the contrary, the Town's intervention will assist the Secretary's consideration because of the additional, unique knowledge of the issues that the Town could bring to the proceedings.

The Secretary Should Not Dispose of the Instant Proceeding on Procedural Grounds Without a Hearing on the Merits and Full Participation of Interested Parties

Under the latest CZMA regulations, issued in December 2000, the Secretary is required to override the State's consistency objection if it is not in compliance with certain regulatory requirements. 15 C.F.R. § 930.129(b). Such override is considered a threshold matter by the regulations. *Id.* Millennium has urged the Secretary to dismiss the appeal on these grounds in its notice of appeal. *See* Letter from Frederic G. Berner, Sidley, Austin *et al.* (representing Millennium), to Donald L. Evans, Sec. Of Commerce, dated June 7, 2002, enclosure (Notice of Appeal) at 1. While the Town reserves the right to respond to this issue at a later stage in these proceedings with a full brief, at this time we respectfully suggest that such threshold disposal of this matter would be inappropriate.

First, Millennium has unclean hands with respect to the delay in issuance of the State's objection, as it was in part responsible. Millennium failed to submit all the information requested by the State within the time period provided for by the regulations. Millennium's original filing with the State did not contain necessary data and information for NYSDOS to start its consistency review, and subsequent changes to the proposed pipeline route required Millennium to re-file a revised consistency certification in March 2001, and an Addendum in July 2001. Millennium also failed to disclose critical information to NYSDOS concerning its intent to conduct underwater blasting within the Haverstraw Bay designated habitat until *after* the Federal Energy Regulatory Commission ("FERC") released its Final Environmental Impact Statement ("FEIS"). This "oversight" prompted FERC to prepare a modified Hudson River crossing plan and reopen consultations with other agencies. Millennium did not deliver the necessary additional information concerning the underwater blasting plan and the blasting impact assessment to NYSDOS until April 23, 2002. *See* Letter from Glen T. Bruening, NYSDOS, to Thomas S. West, LeBoeuf, Lamb, *et al.* (representing Millennium), dated May 24, 2002. Millennium should not be permitted to benefit in this appeal from its own tardiness in responding to the State's information requests.

Moreover, the CZMA regulations establishing the threshold procedural determination also provide that the State and the party seeking a consistency certificate can agree to extend the time period for consideration of the certification petition. In its correspondence with the State, Millennium expressly agreed to an extension of the time for consideration, and has not objected to the delay in any prior proceedings. *See* Letter from Thomas S. West, LeBoeuf, Lamb, *et al.* (representing Millennium), to William Barton, NYSDOS, dated Sept. 12, 2001. Millennium is now seeking to penalize the State for this agreed upon extension, and should not be permitted to do so.

Karl Gleaves, Esq.
July 11, 2002

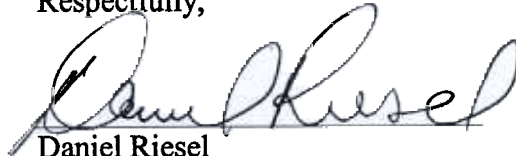
SIVE, PAGET & RIESEL, P.C.

Page 5

Any determination by the Secretary of these threshold procedural matters should be done with full opportunity for public participation and comment. The regulations specify that, "[t]he Secretary *shall* provide timely notice of the appeal [of the consistency objection]" and that, "[t]he Secretary *shall* provide an opportunity for public comment on the appeal." 15 C.F.R. § 930.128 (a) and (b) (emphasis supplied). These duties are non-discretionary; the public has a right to participate in the appeal proceedings through notice and comment procedures. Thus, even a threshold determination should be open to such public scrutiny.

For the foregoing reasons, the Town of Cortlandt should be allowed to participate in the appeal proceedings as a party co-defendant, intervenor, or special participant. Additionally, the appeal should not be disposed of on procedural grounds without a hearing on the merits and full participation of all interested parties.

Respectfully,

A handwritten signature in blue ink, appearing to read "Daniel Riesel", is written over a horizontal line.

Daniel Riesel
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York